

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Southwest Power Pool, Inc.) Docket No. ER08-1419-___

**REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE,
REHEARING OF SOUTHWEST POWER POOL, INC.**

Pursuant to Rules 212 and 713 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,¹ Southwest Power Pool, Inc., ("SPP") submits this Request for Clarification or, in the Alternative, Rehearing of the final order issued on October 16, 2008 in the above-captioned docket.²

I. BACKGROUND

On August 15, 2008, SPP filed amendments to its Open Access Transmission Tariff³ to establish a process for including a "balanced portfolio" of economic upgrades into the SPP Transmission Expansion Plan ("STEP") and a regional postage stamp rate design for recovery of costs of such upgrades.⁴ The amendments were developed through an extensive stakeholder process and have overwhelming stakeholder and state

¹ 18 C.F.R. §§ 385.212 and 385.713.

² *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008) ("October 16 Order").

³ Open Access Transmission Tariff For Services Offered By Southwest Power Pool, FERC Electric Tariff, Fifth Revised Volume No. 1 ("Tariff").

⁴ SPP Submission of Revisions to Open Access Transmission Tariff to Add "Balanced Portfolio" Cost Allocation Process for Economic Planning Upgrades, Docket No. ER08-1419-000 (Aug. 15, 2008) ("August 15 Filing").

commission support.⁵ On October 16, 2008, the Commission accepted SPP's proposed tariff revisions with only minor modifications.⁶

II. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

In accordance with Order No. 663-A⁷ and Rule 713 of the Commission's regulations,⁸ SPP states the following issue and specification of error presented for clarification or rehearing:

The Commission should clarify that current Tariff provisions comply with the Commission's requirement in the October 16 Order to provide a mechanism that allows for market participants to review the results of the system design software, including appropriate arrangements to protect sensitive information, and that no further Tariff amendments are necessary.⁹

Alternatively, if the Commission ruled such further tariff amendments are necessary, it should reverse such ruling as contrary to Commission precedent.¹⁰

⁵ August 15 Filing at 2; *see also* Amended Notice Of Intervention Of The Missouri Public Service Commission, Docket No. ER08-1419-000, at 1-3 (Sept. 11, 2008) ("MoPSC Amended Notice").

⁶ *See, generally*, October 16 Order.

⁷ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,211 (2006).

⁸ 18 C.F.R. § 385.713.

⁹ *Compare* October 16 Order at P 37 (The Commission appears to order SPP to modify its Tariff to comply with the transparency principles of Order No. 890) and *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at PP 25, 32 (2008) ("July 11 Order") (The July 11 Order finds that the Tariff complies with the transparency and information exchange principles of Order No. 890 principles).

¹⁰ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 671 (D.C. Cir. 2007) ("[W]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious," quoting, *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995)).

III. REQUEST FOR CLARIFICATION, OR IN THE ALTERNATIVE, REHEARING

In the October 16 Order, the Commission citing to requirements in Order No. 890, directed SPP to file revised tariff sheets with provisions ensuring that the “system design software results needed for stakeholders to verify the application of the assumptions in creating the adjusted production cost-benefit metrics will be made available subject to the signing of confidentiality agreements or other needed arrangements to protect sensitive information.”¹¹ For the reasons set forth below, SPP seeks clarification that SPP’s current Tariff provisions fulfill the Commission’s directives in the October 16 Order.

SPP’s current Tariff already contains provisions that enable stakeholders access to the underlying data in order to replicate the results of the transmission planning studies, including balanced portfolio studies. On December 14, 2007, in Docket No. OA08-61, SPP filed its transmission planning process in Attachment O of the Tariff to comply with the transmission planning principles outlined in Order No. 890.¹² In Section VI.6(b) of Attachment O, SPP included the following provision as required by Order No. 890:

The related study results, criteria, assumptions and data underlying the studies used to develop the list of reliability and economic projects shall be posted on the SPP website, with password protected access if required to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement and to address CEII requirements. The CEII compliant redacted version of the SPP Transmission

¹¹ October 16 Order at P 37.

¹² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, at P 476, *order on reh’g*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008)).

Expansion Plan shall be posted on the SPP website. The redacted version shall include instructions for acquiring the complete version of the SPP Transmission Expansion Plan.

Additionally, SPP included Section X.7 in Attachment O to maintain the confidentiality of certain data in light of the Commission's informational exchange requirements in Order No. 890:

7) Confidentiality Requirements

a) The Transmission Provider shall make all reasonable efforts to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement.

b) For those entities that have executed a confidentiality agreement, the Transmission Provider shall provide password protected access to confidential information related to the SPP Transmission Expansion Plan and the underlying studies and models via the SPP website.

c) The form of confidentiality agreement shall be posted on the SPP website.

d) Resource specific data shall not be made available by the Transmission Provider if the data has been designated confidential by the data provider or if the data can be used to:

(i) Determine security constrained unit commitment or economic dispatch for resources; or

(ii) Perform an economic evaluation of costs and benefits.

e) Other transmission planning information shall be posted on the SPP website and may be password protected, as appropriate.

f) Confidentiality agreements shall be required for Members and Market Participants to receive data where the owner of the data has given permission to the Transmission Provider to release the data.

On July 11, 2008, the Commission accepted the above provisions of SPP's proposed transmission planning process as compliant with the transmission planning principles outlined by the Commission in Order No. 890.¹³ Specifically, the Commission stated that SPP's

Attachment O also adequately describes the methodology that SPP will use to disclose the criteria, assumptions, and data that underlie its transmission system plans and information regarding the status of upgrades that are identified in its plan. Specifically, section VI.6(b) provides that the related study results, criteria, assumptions and underlying data shall be posted on the SPP website, with password protected access, if required to preserve the confidentiality of the information.^[14]

The Commission further found that SPP's Attachment O complied with the information exchange principles and that any concerns "regarding access to confidential information [was] satisfied by SPP's statement that it will provide confidential data to entities that have executed a confidentiality agreement."¹⁵ Significantly, the Commission did not require SPP to make any modifications or changes to either of these two provisions.

In the August 15 Filing, SPP modified Section VI.6(b) of Attachment O to make clear that the related study results, criteria, assumptions and data underlying the studies used to develop the list of upgrades within proposed balanced portfolios would be available pursuant to appropriate confidentiality mechanisms.¹⁶ Similarly, it specified

¹³ See July 11 Order.

¹⁴ July 11 Order at P 25.

¹⁵ July 11 Order at P 32.

¹⁶ See August 15 Filing, Attachment III, [redline of First Revised Sheet No. 300I]. Section VI.6(b) of Attachment O of the Tariff was changed as follows:

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that balanced portfolios are considered “High Priority Studies” for which SPP will issue a report and post the report and related studies and the criteria, assumptions and data on the SPP website, with password protected access if required to preserve the confidentiality of information.¹⁷ Furthermore, as SPP stated in its answer in this docket, SPP has committed to make public as much information as possible regarding its transmission

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The related study results, criteria, assumptions and data underlying the studies used to develop the list of ~~reliability and economic projects~~ upgrades within proposed Balanced Portfolios and proposed reliability upgrades shall be posted on the SPP website, with password protected access if required to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement and to address CEII requirements. The CEII compliant redacted version of the SPP Transmission Expansion Plan shall be posted on the SPP website. The redacted version shall include instructions for acquiring the complete version of the SPP Transmission Expansion Plan.

¹⁷ See August 15 Filing, Attachment II, [First Revised Sheet No. 300C and Original Sheet No. 300C.01]. New Section IV(3)(g) of Attachment O of the Tariff states:

For each high priority study the Transmission Provider shall publish a report, including but not limited to, the study input assumptions, the estimated cost of the upgrades included in the high priority study, the expected economic benefits of the upgrades, and identify reliability impacts, if any, of the upgrades. The report and related studies and the criteria, assumptions and data underlying the report shall be posted on the SPP website, with password protected access if required to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement and to address Critical Energy Infrastructure Information (CEII) requirements. The CEII compliant redacted version of the report shall be posted on the SPP website. The redacted version shall include instructions for acquiring the complete version of the report.

planning process (of which the balanced portfolio is a part of), consistent with protecting the confidentiality of customer information in compliance with the transparency principles of Order No. 890.¹⁸

Additionally, in furtherance of those transparency principles and to ensure clear compliance with the October 16 Order, in its compliance filing in this docket, SPP will submit revised tariff sheets that expressly reference the information sharing and reporting requirements in Part X (Information Exchange) and Section IV(3) (High Priority Studies) of this Attachment O.

Thus, SPP through its existing tariff provisions already has in place a mechanism that allows for market participants to review the results of the analysis included in balanced portfolio studies. As such, SPP should not be required to amend its Tariff further to provide additional information.¹⁹ Simply put, the Tariff already provides

¹⁸ See Answer of Southwest Power Pool, Inc. to Intervenors' Comments, Docket No. ER08-1419-000, at 8-9 (Sept. 22, 2008) (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, at P 476, *order on reh'g*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008)).

¹⁹ SPP is required to abide by the confidentiality provisions of Attachment O as well. For example, under Section X.7(d), SPP is not permitted to provide resource specific data if the data has been designated confidential by the data provider or if the data can be used to determine security constrained unit commitment or economic dispatch for resources. This provision has been accepted by the Commission in compliance with Order No. 890 and is consistent with prior precedent. See *Cal. Indep. Sys. Operator, Corp.*, 123 FERC ¶ 61,283, at P 87 (2008) ("In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information."); *U.S. Dept. of Energy – Bonneville Power Admin.*, 124 FERC ¶ 61,054, at P 38 (2008) (same);
(continued . . .)

adequate means for a market participant, with regard to the balanced portfolio, to be “able to review the system design software results to check the application of the assumptions in creating the adjusted production cost-benefit metrics,”²⁰ while protecting the legitimate confidentiality concerns of those providing the data. As a result, there should be no concern that market participants will not have sufficient information to check the application of the assumptions in the balanced portfolio.

In the event that the Commission fails to clarify that additional Tariff modifications are unnecessary to provide a mechanism that allows for market participants to review the results of the system design software, including appropriate arrangements to protect sensitive information in order to comply with the October 16 Order, SPP seeks rehearing of the October 16 Order as contrary to Commission precedent to the extent that it requires such additional Tariff modifications. The Commission already has found that SPP’s existing Tariff provisions in Attachment O are in compliance with Order No. 890 requirements for transparency and information exchange, and SPP should not be required to modify its Tariff to provide additional data and information that is not consistent with Commission precedent and Order No. 890.²¹

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Midwest Indep. Transmission Sys. Operator, Inc., 123 FERC ¶ 61,165, at P 30 (2008) (same).

²⁰ October 16 Order at P 37.

²¹ Order No. 890 at P 471; Order No. 890-A at P 199; and Order No. 890-B at P 36-37.

IV. CONCLUSION

The Commission should clarify that the existing Tariff provisions – Sections IV.3(g), IV.6(b) and X.7 of Attachment O – already comply with its directive in the October 16 Order to provide a mechanism that allows for market participants to review the analysis of balanced portfolios and that no further modifications to the Tariff are necessary. In the alternative, it should grant rehearing of the October 16 Order to so provide.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of November, 2008.

A handwritten signature in cursive script, reading "Carrie L. Bumgarner". The signature is written in black ink and is positioned above a horizontal line.

Carrie L. Bumgarner